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IN THE SUPREME COURT OF THE UNITED STATES

JAMES WILLIE BROWN	*	CASE NO. 86-6923
PETITIONER	*	
VS.	*	
W. J. DODD, SHERIFF GWINNETT COUNTY	*	
RESPONDENT	*	

RESPONSE TO PETITIONER'S BRIEF

BY THE DISTRICT ATTORNEY, GWINNETT JUDICIAL CIRCUIT

STATE OF GEORGIA

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FACTUAL BACKGROUND

The Respondent essentially agrees with the chronology set out by Petitioner except to note the following:

1.

The examination conducted on October 10, 1980 by Dr. Marinkovic was conducted at the request of jail authorities because Petitioner was passing threatening and suggestive notes to female inmates. This evaluation was for jail security purposes, not for competency evaluation.

2.

Petitioner's retained counsel, Frank Hester, filed a Demand for Speedy Trial at the specific request of the Petitioner.

3.

Dr. Lewis Embry Collins, Jr. was subjected to cross-examination by Mr. Hester both at the competency trial on April 8, 1981 and at the trial of the case in chief.

4.

Petitioner was found competent to stand trial by a jury after testimony by Dr. Collins, jail personnel, and the Petitioner himself regarding his competency. This testimony was only rebutted by the testimony of his retained attorney, Frank Hester.

5.

The Respondent denies and dies not agree with the characterization of the tesimony of Dr. Thomason and further notes that Dr. Thomason supported Dr. Collins' evaluation procedures and his competency.

6.

Petitioner's prior counsel, Mr. hester, "testified" on February 3, 1986 that his client was able to provide him with information to investigate the case and that in fact he (nester) did conduct an extensive investigation into the facts surrounding the charges against the Petitioner.

ARGUMENT OF RESPONDENT

In this case, the Petitioner was found competent to stand trial by a jury. At this jury trial, the only evidence of incompetence was the testimony of his retained attorney. The defendant himself testified before the jury that he was ready to stand trial and in fact wanted to stand trial. The decision of the jury was not based solely on the evidence provided by Dr. Collins but upon all evidence present. Further, it should be

noted that the chain of events was precipitated by the filing of a Demand for Speedy Trial by the Petitioner.

The cases cited by the Petitioner can be distinguished on several points.

First, in both Ake and Blake the defendants were indigent and represented by appointed counsel. Here, the Petitioner was represented by retained counsel who was well aware of the Petitioner's prior problems (probably more aware that the State). It was incumbent upon counsel to examine the competency of the evaluation of the defendant.

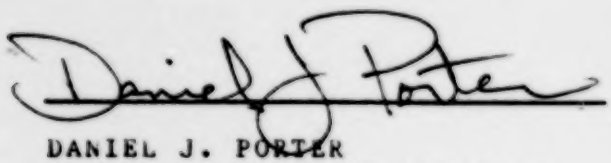
Second, both cases cited by the Petitioner go to the issue of determining sanity at the time of the offense. In both cases, the Court ruled that State action prevented the presentation of an adequate defense. The issue presented in the present case is competency to stand trial. No action by anyone prevented James Willie Brown from receiving an adequate evaluation of his competency to stand trial.

In conclusion, the thread that runs through all proceedings is that James Willie Brown demanded a speedy trial and got it. He was able, by the testimony of his attorney, to assist in the prepration and presentation of his defense which failed to convince a trial jury. He was so insistent on getting a trial that he testified he was competent and the jury believed him.

CONCLUSION

Based on the foregoing, Respondent submits that the Petitioner's requests be denied.

Respectfully submitted,



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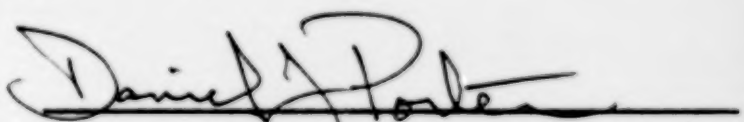
CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the Petitioner with a copy of this Response to Petitioner's Brief by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage affixed thereon to:

Mr. Joseph M. Nursey
Counsel for Petitioner
Post Office Box 1978
Atlanta, Georgia 30301

This 14th day of July, 1987.



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